

### **Remarks**

Claims 1-27 are pending. Favorable reconsideration is respectfully requested.

The claims have been made subject to restriction. The basis for the restriction is not understood. The product claims (claims 1-12) pertain to crosslinkable polymer compositions which are mixtures of two distinct polymers A) and B). Since these polymers are distinct, they must be prepared separately. Claims 13-16 are process claims dependent upon claim 1, which specify the method of production, i.e. preparation of copolymer A), preparation of copolymer B), and mixing together.

In the last Office Action, the Office states that Applicants' traversal is not persuasive

because copolymer A0 [sic] and copolymer B) could each independently of the other be prepared by random polymerization and then mixed together. This is a materially different process of making the invention then is set forth in the claims of Group II.

However, this is the exact process of claim 13, which requires the separate preparation of polymers A) and B) and then mixing them together. Mixing together requires that the components were previously separate ("not mixed"). However, to make the claim language yet more certain, the term "separately" has been added to claim 13. In each case, the polymerizations can be random, since at some point in time, all the respective comonomers will be present at the same time. Applicants respectfully submit that the restriction is still improper, since the product of claim 1 can only be made by the process of claim 13, and the process of claim 13 only makes the process of claim 1.

Claim 1 is also a linking claim as defined in MPEP § 809.03(B) and (D). Claim 1 links the product and its necessary process of manufacture (§ 809.03(B): Groups I and II), and also the product (claim 1) and use thereof (§ 809.03 D: Groups I and III). The Group III

claims are all directed to use of the product. Under MPEP § 809.03, the restriction between Groups I, II, and III should all be made conditionally, subject to allowance of the linking claims.

Finally, according to MPEP § 821.04, even if restriction were proper, the product and process must be rejoined (“will be rejoined”). Thus, Applicants have not at this time cancelled any of the withdrawn claims. Should the product claims be allowable, and should some of the withdrawn claims not be rejoined, the Examiner is requested to telephone Applicants’ attorney for permission to cancel those claims by Examiner’s amendment.

Claims 1-12 have been rejected under 35 U.S.C. § 102(e) as anticipated by Wierer et al., U.S. Patent 6,599,455 (“*Wierer*”) commonly assigned. Applicants respectfully traverse this rejection, as *Wierer* is not prior art to Applicants.

Applicants’ U.S. Patent Application Serial No. 09/804,495 was filed March 12, 2001, claiming priority to German application DE 100 14 399.7 filed March 23, 2000.

The commonly assigned *Wierer* application 10/004,098, which matured into U.S. Patent 6, 599,455 on July 29, 2003, was filed on October 31, 2001, claiming benefit of German application 100 54 162 filed November 2, 2000.

Under 35 U.S.C. § 102(e), the only foreign filed applications which are prior art earlier than their U.S. filing dates, are PCT applications which both designate the United States and are filed in the English language. *Wierer* is neither a PCT application nor was it filed in English. Thus, *Wierer*’s effective date for prior art purposes under 35 U.S.C. § 102(e) is its U.S. filing date of October 31, 2001.

However, the present application was filed earlier than October 31, 2001, on March 12, 2001. Therefore, *Wierer* is not prior art to Applicants under 35 U.S.C. § 102(e), and the rejection must be withdrawn.

Accompanying this response is the Terminal Disclaimer of Wacker Polymer Systems GmbH & Co. K.G. disclaiming the terminal portion of any patent issuing from this application which might extend beyond the full statutory term of the *Wierer* application. This Terminal Disclaimer is being filed to obviate any obviousness double patenting rejection, and to therefore facilitate and expedite prosecution.

Applicants submit that the claims are now in condition for Allowance, and respectfully request a Notice to that effect. If the Examiner believes that further discussion will advance the prosecution of the Application, the Examiner is highly encouraged to telephone Applicants' attorney at the number given below.

Respectfully submitted,

**KLAUS KOHLHAMMER ET AL.**

By 

William G. Conger

Reg. No. 31,209

Attorney/Agent for Applicant

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**BROOKS KUSHMAN P.C.**  
1000 Town Center, 22nd Floor  
Southfield, MI 48075-1238  
Phone: 248-358-4400  
Fax: 248-358-3351